

## LATHAM & WATKINS LLP

February, 25, 2003

**By Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

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Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
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	Washington, D.C.

Re: *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, FCC Public Notice in CC Docket No. 96-45 (DA 03-26, Wireline Comp. Bur., rel. Jan. 7, 2003);  
*Wireline Competition Bureau Seeks Comment on Louisiana Unwired, LLC Petition for Designation as an Eligible Telecommunications Carrier[ETC] in Certain Non-Rural Service Areas in the State of Alabama*, FCC Public Notice in CC Docket No. 96-45 (DA 03-389, Wireline Comp. Bur., rel. Feb. 10, 2003) --  
Notice of Ex Parte Communication in CC Docket 96-45

Dear Ms. Dortch:

Yesterday, February 24, on behalf of CenturyTel, Inc. and CenturyTel of Eagle, Inc., I met with Christopher Libertelli of the Chairman's Office to discuss issues pending in the above-captioned docket; and on Wednesday, February 12, John Jones of CenturyTel and I met with Lisa Zaina of Commissioner Adelstein's office to discuss the same subject. In particular, in these meetings we discussed the Petition by the Colorado Public Utilities Commission (COPUC), pursuant to 47 C.F.R. § 54.207(c), for FCC agreement to the redefinition of the service area of CenturyTel of Eagle, a rural telephone company within the meaning of the Communications Act, as well as other recent proceedings in CC Docket 96-45 involving the designation of competitive eligible telecommunications carriers (CETCs) in CenturyTel's service areas. Chris and Lisa were provided copies of CenturyTel's Application for Review in this proceeding, filed December 17, 2002, and its December 30, 2002 *ex parte* letter in this docket; in addition, Chris was provided with copies of CenturyTel of Eagle's February 21, 2003 reply comments in this proceeding as well as the February 24, 2003 comments of CenturyTel of Alabama, LLC on the Petition of Louisiana Unwired for designation as an ETC in non-rural parts of Alabama.

CenturyTel urged that the Commission grant its application for review, or at least stay the effect of the Bureau's decision to allow the redefinition of the Colorado service area of CenturyTel of Eagle, which is currently in effect. CenturyTel pointed out that the Commission very recently referred

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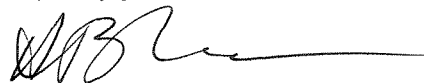
issues directly raised by the COPUC petition to the Federal-State Joint Board on Universal Service, making it even more surprising that the Colorado redefinition has been allowed to take effect.

CenturyTel does not propose that the FCC halt all certification of new ETCs while the Joint Board proceeds with its consideration of these matters, but rather that the Commission take a hard look at such certifications, especially where (as with Louisiana Unwired) the competitive carrier is merely seeking access to a windfall (or bailout) unrelated to serving the rural population. Most importantly, CenturyTel hopes the Commission will suspend any redefinition of rural service areas until it has taken a hard look at the conditions under which such redefinitions make sense, and considered the recommendations of the Joint Board.

Finally, CenturyTel wishes to update the record in this proceeding concerning additional state CETC designations. We previously noted that at least two states, South Dakota and Utah, have considered petitions by wireless carriers to serve rural parts of the states on a competitive basis and denied them on the grounds that they would not benefit the public or advance universal service. We have recently received a decision by the South Dakota Public Utilities Commission which reverses that finding as to GCC License Corporation, a/k/a WWC License LLC d/b/a CellularOne, a/k/a Western Wireless, and designates Western Wireless as an ETC for certain areas of South Dakota served by rural telephone companies. *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Order Designating Western Wireless As an ETC for Areas Served By Certain Rural Telephone Companies, TC98-146 (S.D. P.U.C. Jan. 6, 2003). A copy of that decision is attached.

Please direct any questions concerning this matter to me.

Very truly yours,



Karen Brinkmann

Attachment

cc: Christopher Libertelli  
Lisa Zaina  
William Maher, Chief, Wireline Competition Bureau  
Jessica Rosenworcel, Legal Counsel to the Chief, Wireline Competition Bureau  
Anita Cheng, Deputy Chief, Telecommunications Access Policy Division, WCB

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE FILING BY GCC</b>	)	<b>ORDER DESIGNATING</b>
<b>LICENSE CORPORATION FOR DESIGNATION</b>	)	<b>WESTERN WIRELESS AS</b>
<b>AS AN ELIGIBLE TELECOMMUNICATIONS</b>	)	<b>AN ETC FOR AREAS</b>
<b>CARRIER</b>	)	<b>SERVED BY CERTAIN</b>
	)	<b>RURAL TELEPHONE</b>
	)	<b>COMPANIES</b>
	)	<b>TC98-146</b>

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest;

On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

Pursuant to its October 18, 2001, order, the Commission found that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

On August 29, 2002, GCC, now known as WWC License LLC d/b/a CellularOne, [hereafter referred to as Western Wireless] filed a compliance filing. By letter dated September 19, 2002, SDTA (formerly known as SDITC), filed a letter asking that the Commission "defer any action on that filing until after some formal process has been held allowing fair input by SDTA on the issues that are presented." The compliance filing was reviewed at the Commission's September 24, 2002, meeting. Based on the discussion at that meeting, Western Wireless filed a revised compliance filing on October 11, 2002. At its November 20, 2002, meeting, additional concerns regarding the compliance filing were noted by the Commission, including the listing of the wrong eligibility criteria on Western Wireless' Lifeline form. In addition, the Commission set a procedural schedule to allow SDTA an opportunity to comment on the filing. The Commission requested that Western Wireless submit its revisions by December 2, 2002; SDTA and Staff could file written comments by December 12, 2002; and Western Wireless could file reply comments by December 17, 2002; and the Commission would consider the filing at its December 19, 2002, meeting.

The Commission received Western Wireless' revisions on December 2, 2002, and SDTA's comments on December 12, 2002. On December 13, 2002, Western Wireless submitted a letter requesting an extension of the time to file its response. Western Wireless requested that it be allowed to file its response by January 3, 2003, and that the matter be heard at the Commission's January 16, 2003, meeting. The Commission granted a shorter extension and allowed Western Wireless until December 27, 2002, to file its response, with the Commission holding an ad hoc meeting on January 2, 2003, to consider this matter. Western Wireless filed its response on December 27, 2002.

At its January 2, 2003, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, and 47 U.S.C. § 214(e)(1) through (5). After considering the arguments of the parties, the Commission voted to find that Western Wireless' revised compliance filing meets the conditions as specified in the Commission's October 18, 2001, order. As stated in that order, the Commission found that it was in the public interest to designate Western Wireless as an ETC for the study areas of the rural telephone companies listed in the attached Attachment A, upon Western Wireless' compliance with the conditions. It is therefore

ORDERED, that Western Wireless' revised compliance filing meets the conditions as specified in the Commission's October 18, 2001, order, and, therefore, Western Wireless is designated as an ETC for the areas served by the rural telephone companies listed on Attachment A.

Dated at Pierre, South Dakota, this 6th day of January, 2003.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: \_\_\_\_\_

Date: \_\_\_\_\_

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
JAMES A. BURG, Chairman

\_\_\_\_\_  
PAM NELSON, Commissioner

\_\_\_\_\_  
ROBERT K. SAHR, Commissioner